

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHELLE I. WAKER and U.S. POSTAL SERVICE,
POST OFFICE, Baltimore, MD

*Docket No. 02-1909; Submitted on the Record;
Issued January 22, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on July 24, 2001 causally related to her August 7, 1986 employment injury.

The Office of Workers' Compensation Programs accepted that on August 7, 1986 appellant, then a 30-year-old postal collector and delivery person, sustained a work-related injury. The Office accepted bilateral tarsal tunnel syndrome and surgery resulting from the occurrence on March 21, 1992 to May 25, 1993. Subsequent to the injury, appellant returned to work in a modified capacity on June 22, 1998.

On July 24, 2001 appellant filed a notice of recurrence of disability alleging that she sustained a recurrence of her August 7, 1986 injury. She did not lose time from work; however, the record reflects that her position was changed from delivering mail to a distribution and window clerk.

In a letter dated August 15, 2001, the Office advised appellant of the additional factual and medical information needed to establish her claim.

In a September 19, 2001 decision, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that she sustained a recurrence of disability causally related to the accepted employment injury.

In a July 30, 2001 report, Dr. Festo G. Mlela,¹ an emergency medicine physician, diagnosed bilateral heel spurs. He advised appellant to see her private medical doctor for further evaluation and treatment of this long-standing problem. Further, he advised that appellant's care

¹ The report was unsigned.

was transferred to her primary physician and informed that this was a nonwork-related situation and probably best taken care of by her private medical doctor.

By letter dated September 28, 2001, appellant requested a review of the written record. To support her request, appellant submitted the July 9, 2001 report of Dr. Patrick Swier, a Board-certified plastic surgeon and a general surgeon.

In his July 9, 2001 report, Dr. Swier noted appellant's history of injury and treatment. He opined that appellant had bilateral compression neuropathies of her common and deep peroneal nerves, as well as her posterior tibial nerves, including the medial and lateral plantar nerves in the distal tarsal tunnel. Dr. Swier indicated that appellant was an excellent candidate for relief and release of these nerves, as she still had positive Tinel's signs. He noted that he had discussed with appellant the risks and benefits of nerve release surgery, including infection, pain, bleeding, scarring, nerve damage, neuroma, recurrence, need for more surgery, anesthesia, stroke, death, etc. Further, Dr. Swier advised that he had recommended a right leg decompression.

By decision dated January 16, 2002, the Office hearing representative affirmed the September 19, 2001 decision.

By letter dated March 21, 2002, appellant requested reconsideration and enclosed additional medical evidence.

In an August 15, 2000 report, Dr. Marla R. Jassen, a podiatrist, noted appellant's history of injury and treatment. Dr. Jassen's impression was severe pronation bilaterally and she diagnosed right tarsal tunnel syndrome. She indicated she believed the majority of appellant's symptoms were related to her pronation. Dr. Jassen opined that if they could control this, it should alleviate some of her symptoms.

In an August 7, 2002 report, Dr. Henry A. Spindler, Board-certified in physical medicine and rehabilitation, noted appellant's history of injury and treatment. Dr. Spindler opined that the findings were consistent with a right tibial neuropathy at the ankle (tarsal tunnel syndrome) and the findings were primarily to the lateral plantar branch with some evidence of a mild sensory polyneuropathy.

By decision dated July 2, 2002, the Office found that the evidence was insufficient to warrant modification of its prior decisions.

The Board finds that appellant has not established that she sustained a recurrence of disability beginning July 24, 2001 causally related to her August 7, 1986 employment injury.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the

employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.²

Appellant has not provided sufficient medical reports, based on objective findings, which establish that there has been a change in the nature and extent of her condition such that she can no longer perform her light-duty job or to establish that there has been a change in the nature and extent of her light-duty job requirements.

In the instant case, appellant provided reports from her treating physicians. She provided a report from Dr. Mlela dated July 30, 2001, a report from Dr. Swier dated July 9, 2001, a report from Dr. Spindler dated August 7, 2002 and a report from Dr. Jassen dated August 15, 2000. None of these reports offered a rationalized opinion to explain why appellant could no longer perform the duties of her light-duty position.³ Further, they did not offer a rationalized medical opinion indicating that appellant was disabled or explain how appellant sustained a recurrence of total disability such that she could no longer perform her light-duty position. Dr. Mlela diagnosed bilateral heel spurs, a condition which has not been accepted by the Office and even indicated appellant's condition was not work related. Dr. Swier discussed nerve release for appellant's condition but did not offer any opinion on causal relationship or appellant's disability to her accepted condition. Dr. Spindler merely provided a diagnosis of right tibial neuropathy. Finally, Dr. Jassen provided a diagnosis and related the cause to appellant's pronation. She did not provide any opinion with respect to the relationship of appellant's condition to her employment. In the instant case, none of the physicians addressed whether appellant's disability was related to the accepted employment injury. As appellant has not submitted competent medical evidence showing that she was disabled beginning July 24, 2001, due to her accepted employment injury, she has not met her burden of proof.

² *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant; *see Charles E. Burke*, 47 ECAB 185 (1995).

The July 2 and January 16, 2002 and September 19, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
January 22, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member